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EXAMINER

PICH, PONNOREAY

ART UNIT

PAPER NUMBER

2435

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Docketing.US@motorola.com

Response to Arguments

Applicant's remarks were fully noted. Applicant's declaration under 37 CFR 132 was fully considered, but is insufficient to overcome the rejection using the Goldstein reference. As discussed in the interview held on 9/16/08, Goldstein (US 5,381,481) qualifies as a 102(e) reference. However, also discussed during the interview was that the Goldstein was previously published as WO 99/27654 on 6/3/1999. This means the Goldstein reference also qualify also as a 102(a) reference, thus cannot be excluded under 35 USC 103(c). It is noted that in the concluding remarks, applicant stated that the examiner discussed the possibility of another rejection based on a new reference. The examiner respectfully submits that there seems to have been some miscommunications. The examiner's point in bringing the WO 99/27654 reference to applicant's representative's attention during the interview was not to state that a new rejection would be made. The examiner brought the reference to applicant's representative's attention so that applicant's representative would be aware that proof that the Goldstein reference qualifying as a 102(a) reference exists, thus even if a declaration was submitted, it would be insufficient to disqualify Goldstein under 35 USC 103(c) since 35 USC 103(c) would only apply to references that are applicable as prior art only under 35 USC 102(e), (f), or (g). Since Goldstein (US 5,381,481) qualifies under 35 USC 102(e) and 102(a), as evidenced by WO 99/27654, no new rejection has to be made. There is no additional evidence that applicant can submit that would disqualify the Goldstein reference under 35 USC 103(c) since Goldstein qualifies as prior art also under 35 USC 102(a).

Art Unit: 2135

Applicant also argues that Wilson fails to teach that a first data stream includes a first number of services of at least two different service types and a second data stream includes a second number of services that is different from the first number of services.

Applicant states that in Wilson's invention, both the first and second number of services are two since Wilson's DBS signals have two services (MPEG audio and video). The examiner respectfully disagrees. The examiner never stated that the audio and video signals disclosed by Wilson were the equivalent of the claimed services. The examiner is equating the television programming content found on each channel as services. As explained on page 3 of the last office action, each channel has different programming, thus the data stream for a first channel is different from the data stream for a second channel. In other words, the number of services of a first data stream carrying the programming for a first channel is different from the number of services of a second data stream carrying the programming for a second channel because each channel has different programming contents/services.

Claims 1-4 and 6-9 stand rejected.

/KimYen Vu/

Supervisory Patent Examiner, Art Unit 2135